Reserve

new file

App F IX 4

Previous References

1934–35
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File No 260-34
Serial Nos

Later References

GENERAL AND REVENUE SECRETARIAT

Serial Nos

Part B for January 35

SUBJECT

Amendments to Sect 115 of the City Mkt. Regln re the grant of License for the Construction of buildings in cities

ordered to be recorded

WD 01965—GPB—15 000—7 7-34

Mel
31-5-35

3536 dl 260-04

App F III—2]

General and Revenue Secretariat

File No 260/1 of 1934

Serial No 1

Extract from notes in Municipal File No 1 of 1933-34 (Page 1 to 143)

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19 Under Section 115(1) of the City Municipalities Regulation 1933, a person before he begins to construct any building has to give to the municipal Council notice in writing and to furnish plans etc, as required by byelaws or any special order of the Municipal Council He is also required to mention the purpose for which the building will be used

20 On receipt of such a notice the Municipal Council may do one of three things mentioned in Sub Section (2) of Section 115 that is it may (a) either give permission or (b) impose in writing certain conditions mentioned in the Section or (c) direct that the work shall not be proceeded with unless and until certain questions have been decided to their satisfaction The Regulation does not authorise the Municipal Council to refuse permission in toto, (1932 Bom 209) nor does it enable it to pass an order which practically amounts to a refusal (1925 Bom 345) What it can do is only to impose certain conditions and one of such conditions may be as regards the purpose for which the building to be constructed is to be used The condition must however be one in accordance with the Regulation & the rules and bylaws made thereunder

21 Now Clause (s) of Section 51(1) enables the

NOTE—Contn Sheet

WD 0 553 0000—GPE—87 6

Municipal Council to make bye-laws regulating in localities intended for residential purposes, the erection or use of buildings for shops, market places, manufactories, places of public resort or for any other purpose" The byelaws of the Bangalore City Municipality do not seem to contain any provision empowering the Municipal Council to prohibit the construction or use of buildings in a residential quarter for purpose of a cinema or theatre It is also doubtful if under the powers to regulate given under cl (s) the Municipal Council can make such a byelaw.

22/ In the case of Municipal Corporation of the City of Toronto v Virgo (1896 A C 88), the point has been established that a statutory power conferred upon a Municipal Council to make bye-laws for regulating and governing a trade does not in the absence of an express power of prohibition authorise the making it unlawful to carry on a lawful trade in ~~the~~ a lawful manner In this case the statute gave power to the Council to pass byelaws for licensing, regulating and governing hawkers or petty chapmen and other persons carrying on petty trades The byelaws framed by the Council prohibited the hawkers from prosecuting their calling or trade in certain streets in the City of Toronto The Privy Council held that this byelaw was ultravires Lord Davey in delivering the judgment of the Board conceded that the regulation and goverance of a trade

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	might involve the imposition of restrictions on its exercise both as to time and to a certain extent as place, but he pointed out that there was a marked distinction to be drawn between the prohibition of thing and the regulation or goverance of it, for, His Lordship made clear "a power to regulate and govern seems to imply the continued existence of that which is to be regulated or governed "
	23 It therefore follows that no bvelaw can be made under Cl (s) of Section 51 by which the erection or use of buildings in residential quarters, for purposes of a cinema or theatre, can be prohibited The Municipal Council may however regulate such erection or use, by prescribing a license to be taken in such cases and it may in suitable cases refuse such a license But in the absence of any such bye,aw, the Municipal Council cannot it seems, prevent the erection of a theatre on a private site, under Section 115 of the City Municipalities Regulation
U O No P 142 of 33 dated 13-10-1933	Forwarded with compliments to the Government Advocate for favour of his views in the matter Sd N Java Rao 13-10-1933
U O No 78/33-34 dated 12-12-1933	Returned with compliments
	24 The main point for consideration is whether the Municipality has power to refuse absolutely the license to put up a structure as desired by the applicant because it might be a nuisance to the people who attend the church The powers of the Municipality are defined
NOTE—Contn Sheet	

in section 96, (new section 115) of the Municipal Regulation that does not enable the Municipality to arbitrarily refuse a license but could only give certain directions or impose certain conditions

25 The power to make Bye-laws is given in section 51 of the New Regulation Clause (s) (old section 48, cl (pp)) thereof enables the Municipality to frame byelaws 'regulating the erection or use of buildings for grain shops or grain stores and regulating in localities intended for residential purposes the erection or use of buildings for shops, market-places, manufactories, places of public resort or for any other purpose

26 Some other clauses such as clause (t) in the same section enable the Municipality to frame bye-laws preventing the erection of buildings etc the use of the word 'preventing' in some cases and the word regulating' in others is significant It suggests that the Municipality can have no power to frame bye-laws preventing the erection of buildings under clause (s)

27 A recent decision of the Allahabad High Court reported in I L R 55 Allahabad 538 (June 1933) is an authority for this position the learned Judges observe as follows -

> statutory power conferred upon the Municipal Council to make Bye-laws for regulating and governing a trade does not, in the absence of an express power of prohibition, authorise the making of it unlawful to carry on a lawful trade in a lawful manner "

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They follow in this case, the decision of the Privy Council in Municipal Corporation of Toronto vs Virgo, (1896) A C 88

28 In the light of these authorities, the Municipal Council does not seem to possess the power of making bye-laws prohibiting the erection of buildings in cases coming under clause (s) Bye-law 17(a) printed at page 69 of the Rules and Bye-laws of the Bangalore City Municipality, purporting to have been framed not under clause (pp) but under clause (n) and clause (p) of section 48, is as follows -

"No shop or market place, manufactories, places of public resort etc , should be built in the midst of localities intended for residential purposes unless three-fourths of the number of owners in the block or area affected agree to the same"

This Bye-law which prohibits building of shops etc, seems to be, therefore, ultra vires

29 The observations on page 328 of Cumming's Book on the Bombay District Municipalities Act, based as it is on the observations of the Judges in the case reported in I L R 27 Bombay, 221, are to the effect that the Municipality cannot absolutely prohibit any proposed erection on private land The same view is expressed in A I R 1925, Bombay, 345

30 Some changes are introduced in the new Regulation for example, under section 115, clause (1 the applicant is required to furnish all information

NOTE—Cont Sheet

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regarding the purpose for which the building will be used and under clause (2) (b) the Municipal Council may impose conditions 'in accordance with this regulation and the rules and bye-laws' as to the purpose for which the building is to be used

31 Even under the new regulation, I do not think the Municipality can claim to prohibit the erection of a building absolutely

32 But the Bye-law above referred to has been in existence for nearly 20 years and it seems to have been acted upon right through I do not think the validity of that bye-law has been questioned so far by anybody If, therefore, the said Bye-law has been in force all along, it is a point for consideration whether it is not desirable to enforce it leaving it to the parties concerned to agitate the question before a proper tribunal

SI M R Nageswara Iyer
Government Advocate
9-1--1933

33 I find that Bye-law 13 A referred to by the Government Advocate is among the building Bye-laws as printed at pp 67-70 of the Rules and Bye-laws of the Bangalore City Municipality (1916 Edn) These are now no longer in force and have been superseded by the bye-laws sanctioned in Government Notification No L 1939/A 84-25-153 dated 24th September 1927 a copy of which was published by the Municipal Commissioner in his notice dated 31st May 1928 A printed copy is herewith placed

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below for ready reference

34 It is therefore clear that as the law now stands, the erection of the theatre on the site in question cannot be prevented by the Municipal Commissioner by the exercise of his licensing power

Asst Secy L S G with compliments } Intd N J 14/12/33

35 Reference paras 13 & 14 supra

Intd A S R 14/12/33

Chief Secy)

36 A S , Law Pl see me

Intd R R 16/12/33

Intd A S R 16/12/33

37 The Municipal Commissioner's letterof 31st August 1933 said that Mr Bhadrappa's license application would be disposed of on merits after considering the objections raised by the Bishop of Mysore It is learnt that the license has been refused and that Mr Bhadrappa is not constructing a theatre on the site as proposed This was submitted to the Chief Secretary and he desires that the Municipal Commissioner may be further enquired in the matter and a definite report obtained, before passing any final orders in this file

38 He also directed that if the Municipality has under the present Regulation no power to prevent a theatre being constructed in a Residential quarter,

NOTE—Co tu Sheet

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the law has to be suitably amended to give such power to the Municipality this question may be taken up separately

× × ×

Govt N.R.T. 31/1/34

A copy of the city municipality Regulation 1933 is herewith

A new section as follows may perhaps be added under sec 115 of the Regulation empowering the municipal Council to prohibit the creation of theatres or cinema halls in localities intended for residential purposes—

115 A (1) Notwithstanding anything contained in section 115 above, the municipal Council may altogether prohibit the erection of a theatre or a cinema hall in localities intended for residential purposes

(2) Whoever acts contrary to the provisions of subsection (1) shall be punished with fine which may extend Five hundred rupees & the municipal Council may also have the building, if any constructed, demolished.

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The Law section may be consulted as to the suitability of the proposed draft section

for favourable opinion
Asst Secs, Lawdell, Camps
Asst 25/1

Sgn
8/1/34

I think sec 115 itself has to be amended to make it clear that the Municipality has power to refuse permission to construct a building if in its opinion such construction is ~~not~~ against ~~any~~ the provisions of ~~the M' Regs or its byelaws or~~ any law for the time being in force. When this is done what is further required is only an enabling provision for making byelaws to prohibit the construction of theatres in residential quarters.

I would therefore suggest the word "prohibiting" being substituted for the word "regulating" occurring in line 3 of cl (3) of sec 51(1) of the city Mcs Regs which will then enable the M'C to frame byelaws "prohibiting in localities intended for residential purposes, the erection or use of buildings for shops, market places, manufactories, places of public resort or for any other purpose"

~~Clause (a) (b) + (c) of sec 115 (2) may be numbered (c) + (d) and a new clause (a) (b) added as follows —~~

~~(b) refuse permission~~

The following words may be added as

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to cl (a) of sec 115 (2) –

"refuse such permission, if in the opinion of the Municipal Council, such construction, alteration, addition or reconstruction is against ~~any~~ the provisions of ~~any law or rule having the force of law~~ this Regulation or any rule or bye-law made thereunder or"

Assistant Engr
with remarks

16/2

287
Law

19/2/34

Submitted for orders if a draft bill may be prepared as above indicated for the question taken up along with the amendments of any in course of time to the rule which requires

The question may perhaps be kept in view and taken up with other amendments if any to be made during the Committee stage

Chief Engineer

Gen Secy 220/2104

agree

21 FEB 1934
No. 1576

OFFICE OF THE SECOND MEMBER OF COUNCIL
1 – MAR 1934
No. 1557

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